

REMARKS

Reconsideration of the application is requested.

Claims 16-22 remain in the application. Claim 16 has been amended.

In the first paragraph on page 2 of the above-identified Office Action, claims 16-22 have been rejected as being indefinite under 35 U.S.C. § 112, first paragraph.

More specifically, the Examiner states that “the claimed invention is directed to ‘treating an eye’” and that “such method requires treatment of unspecified disease and no evidence indicates that the treatable disease was known to the applicant.”

Applicant notes that a phone call was made to the Examiner and a proposed amendment to claim 16 was faxed to the Examiner on February 27, 2004. The proposed amendment was discussed with the Examiner on March 5, 2004. The Examiner rejected the proposed amended claim 16 and renewed her requirement that a list of diseases be stated in the claim.

Claim 16 has been amended to remove reference to “treating an eye” and language has been added to make clear that the present invention is for providing a pharmacological agent to an eye for ophthalmologic use, that causes little or no damage to the retina, even when used long term. Support for this change may be found in paragraphs 0005 - 0023 of the specification of the instant application.

As stated in paragraphs 0006 through 0009 of the specification of the instant application, the object of the invention is not to treat a particular disease of the eye, but is instead, to provide a pharmacological agent for a variety of purposes, such as a carrier of a variety of possible medicines, tear substitutes, liquid implants, as well as vitreous body substitutes and replacement of lenses (para. 0010) to the eye, without the prior art disadvantage of damaging the eye due to long term application and penetration of the retina. Applicant therefore submits that a list of diseases in the claims is unnecessary in light of the amendment to claim 16 as well as the support found in the specification of the instant application.

A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.

It is accordingly believed that the specification and the claims meet the requirements of 35 U.S.C. § 112, first paragraph. The above noted change to claim 16 is provided solely for the purpose of satisfying the requirements of 35 U.S.C. § 112. The change is neither provided for overcoming the prior art nor does it narrow the scope of the claim for any reason related to the statutory requirements for a patent.

Appl. No. 10/018,398
Amdt. Dated March 26, 2004
Reply to Office Action of December 31, 2003

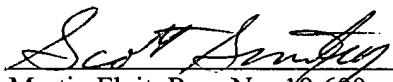


In view of the foregoing, reconsideration and allowance of claims 16-22 is solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

It is believed that no fee is due. If, however, a fee is due, please charge to Deposit Account #500601.

Respectfully submitted,



Martin Fleit, Reg. No. 19,600
by Scott Smiley, Reg. No. 55,627

March 26, 2004
Fleit, Kain, Gibbons, Gutman, Bongini & Bianco, P.L.
601 Brickell Key Drive
Suite 404
Miami, FL 33131
Tel: (305) 416-4490
Fax: (305) 416-4489
e-mail: MFleit@FocusOnIP.com